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Legislative Document

No. 2012

S.P. 728

In Senate, March 9, 2022

An Act Regarding the Authority of Municipalities To Regulate Timber Harvesting

Reported by Senator DILL of Penobscot for the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Resolve 2021, chapter 70, section 1.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 12 MRSA §8868, sub-§5**, as amended by PL 2011, c. 599, §8, is further
3 amended to read:

4 **5. Timber harvesting activities.** "Timber harvesting activities" means timber
5 harvesting, the construction and maintenance of roads used primarily for timber harvesting,
6 the mining of gravel used for the construction and maintenance of roads used primarily for
7 timber harvesting and other activities conducted to facilitate timber harvesting. "Timber
8 harvesting activities" does not include activities that result, within 5 years of the completion
9 of such activities, in a change of land use as defined by the bureau by rule.

10 **Sec. 2. 12 MRSA §8869, sub-§8**, as amended by PL 2003, c. 335, §3, is further
11 amended to read:

12 **8. Relationship to municipal rules and regulations.** Nothing in this subchapter may
13 be construed to preempt or otherwise limit the existing authority of municipalities to
14 regulate timber harvesting activities, except that municipalities regulating timber
15 harvesting activities shall adopt definitions for forestry terms used in their ordinances that
16 are consistent with definitions in section 8868 and with forestry terms adopted by the
17 commissioner pursuant to this subchapter. Municipal timber harvesting ordinances
18 adopted before September 1, 1990 must meet this standard of compliance with definitions
19 no later than January 1, ~~2004~~ 2025.

20 A municipality may not adopt an ordinance that is less stringent than the minimum
21 standards established in this section and in rules adopted by the commissioner to implement
22 this section and section 8867-B. A municipality may not adopt or amend an ordinance that
23 regulates timber harvesting activities unless the process set out in this subsection is
24 followed in the development and review of the ordinance. Municipal ordinances subject
25 to review by the bureau are limited to ordinances that regulate timber harvesting activities.

26 A municipal timber harvesting ordinance adopted on or after September 1, 1990 and before
27 September 1, 2022 must meet the process requirements of this subsection by June 30, 2026.

28 A municipal timber harvesting ordinance adopted on or after September 1, 2022 must meet
29 the process requirements of this subsection.

30 A. A licensed professional forester must participate in the development or amendment
31 of the ordinance.

32 B. A meeting must take place in the municipality during the development or
33 amendment of the ordinance between representatives of the department and municipal
34 officers and officials involved in developing the ordinance. Discussion at the meeting
35 must include, but is not limited to, the forest practices goals of the municipality. At
36 this meeting and subsequently, the department shall provide guidance to the
37 municipality on how the municipality may use sound forestry practices to achieve the
38 municipality's forest practices goals.

39 C. The municipality shall hold a public hearing to review a proposed ordinance or
40 ordinance amendment at least 45 days before a vote is held on the ordinance. The
41 municipality shall post and publish public notice of the public hearing according to the
42 same general requirements of posted and published notice for zoning ordinance public
43 hearings as provided by Title 30-A, section 4352, subsection 9.

1 In addition, when a municipality proposes to adopt or amend a timber harvesting
2 ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001,
3 the municipality shall mail notice of the hearing by first-class mail at least 14 days
4 before the hearing to all landowners in the municipality at the last known address of
5 the person on whom a property tax on each parcel is assessed. In the case of a timber
6 harvesting ordinance or amendment that applies only to certain zones or land use
7 districts in the municipality, the municipality may meet the requirements of this
8 paragraph by mailing notice only to those landowners whose land is in a zone or land
9 use district or immediately abutting the affected zone or land use district.

10 Mailed notice to individual landowners is not required under this subsection for any
11 type of amendment to an existing local land use ordinance merely to conform that
12 ordinance to the minimum timber harvesting guidelines required by Title 38, section
13 439-A, as those guidelines may be subsequently amended, or to conform any timber
14 harvesting ordinance to the requirements of this section for conformity of definitions
15 when the proposed amendments do not substantially change any previously established
16 timber harvesting standards adopted pursuant to home rule authority.

17 The municipal officers shall prepare and file with the municipal clerk a written
18 certificate indicating those landowners to whom the notice was mailed and at what
19 addresses, when it was mailed, by whom it was mailed and from what location it was
20 mailed. The certificate constitutes prima facie evidence that notice was sent to those
21 landowners named in the certificate.

22 Any action challenging the validity of the adoption or amendment of a municipal
23 timber harvesting ordinance based on the municipality's alleged failure to comply with
24 the landowner notice requirement must be brought in Superior Court within 90 days
25 after the adoption of the ordinance or amendment. The Superior Court may invalidate
26 an ordinance or amendment only if the landowner demonstrates that the landowner was
27 entitled to receive a notice under this section, that the municipality failed to send the
28 notice as required, that the landowner had no knowledge of the proposed ordinance or
29 amendment and that the landowner was materially harmed by that lack of knowledge.

30 D. The municipal clerk shall notify the department of the time, place and date of the
31 public hearing and provide the department with a copy of the proposed ordinance that
32 will be reviewed at the hearing at least 30 days before the date of the hearing.

33 E. At the public hearing, representatives of the department must be provided an
34 opportunity to present and discuss for the municipality's information any reports,
35 articles, treatises or similar materials published by acknowledged experts in the field
36 of sound forestry or silvicultural management to the extent such information is relevant
37 to the proposed ordinance or ordinance amendment.

38 The proposed ordinance or ordinance amendment may be revised after the public
39 hearing. The ordinance or amendment must be submitted to the legislative body of the
40 municipality in accordance with the procedures the municipality uses for adopting
41 ordinances.

42 E-1. A municipal timber harvesting ordinance may be adopted only after certification
43 by the bureau that the municipality adopted the timber harvesting ordinance in
44 accordance with this subsection.

1 E-2. A municipal timber harvesting ordinance must be pursuant to and consistent with
2 a comprehensive plan adopted by the legislative body of the municipality.

3 F. Municipal timber harvesting ordinances may not be unreasonable, arbitrary or
4 capricious and must employ means appropriate to the protection of public health, safety
5 and welfare.

6 G. All direct costs incurred by a municipality associated with landowner notification
7 requirements and other required public notice must be paid to the municipality in
8 accordance with a distribution schedule established under Title 30-A, section 5685,
9 subsection 5. All direct costs incurred by a municipality in order to comply with this
10 subsection for the amendment of ordinances adopted before September 1, 1990 must
11 be paid to the municipality in accordance with a distribution schedule established under
12 Title 30-A, section 5685, subsection 5.

13 **Sec. 3. 12 MRSA §8869, sub-§9**, as repealed and replaced by PL 1999, c. 263, §2
14 and amended by PL 2011, c. 657, Pt. W, §7 and PL 2013, c. 405, Pt. A, §23, is further
15 amended to read:

16 **9. Centralized listing of municipal ordinances.** The bureau shall maintain for
17 informational purposes a statewide centralized listing of municipal ordinances that
18 specifically apply to ~~forest practices~~ timber harvesting activities.

19 ~~A. Within 30 days after the legislative body of the municipality votes on a timber~~
20 ~~harvesting ordinance developed according to the procedures of subsection 8, the clerk~~
21 ~~shall notify the bureau of the outcome and shall file a copy of the ordinance with the~~
22 ~~bureau.~~

23 C. The clerk of a municipality that has a timber harvesting ordinance on September 1,
24 2022 shall provide the bureau with notice and a copy of the ordinance by December
25 31, 2022.

26 D. The clerk of a municipality that is developing a timber harvesting ordinance after
27 September 1, 2022 shall provide the bureau with notice and a copy of the ordinance at
28 least 7 days prior to the meeting of the legislative body of the municipality or the public
29 hearing at which adoption of the ordinance will be considered. The clerk shall notify
30 the bureau within 30 days after adoption of the ordinance.

31 E. A provision of an ordinance that specifically applies to timber harvesting does not
32 take effect unless properly adopted in accordance with subsection 8 and filed with the
33 bureau in accordance with this subsection.

34 **SUMMARY**

35 This bill is reported out by the Joint Standing Committee on Agriculture, Conservation
36 and Forestry pursuant to Resolve 2021, chapter 70. The committee is reporting the bill out
37 for the sole purpose of turning the proposal into a printed bill that can be referred to the
38 committee for an appropriate public hearing and subsequent processing in the normal
39 course. The committee has not taken a position on the substance of this bill and by
40 reporting this bill out the committee is not suggesting and does not intend to suggest that it
41 agrees or disagrees with any aspect of this bill.

1 The bill clarifies that the definition of "timber harvesting activities" under the forest
2 practices laws does not include activities that result, within 5 years of the completion of
3 such activities, in a change of land use.

4 The bill provides that a municipal timber harvesting ordinance must adopt definitions
5 for forestry terms that are consistent with definitions in the Maine Revised Statutes, Title
6 12, section 8868 and with forestry terms adopted by the Commissioner of Agriculture,
7 Conservation and Forestry pursuant to Title 12, chapter 805, subchapter 3-A.

8 The bill provides that municipal ordinances subject to review by the Department of
9 Agriculture, Conservation and Forestry, Bureau of Forestry are limited to ordinances that
10 regulate timber harvesting activities. The bill provides that a timber harvesting ordinance
11 adopted on or after September 1, 1990 and prior to September 1, 2022 must meet the
12 requirements of Title 12, section 8869, subsection 8 by June 30, 2026.

13 The bill provides that a municipal timber harvesting ordinance may be adopted only
14 after certification by the bureau that the municipality adopted the timber harvesting
15 ordinance in accordance with Title 12, section 8869, subsection 8. The bill also requires a
16 municipal timber harvesting ordinance to be pursuant to and consistent with a
17 comprehensive plan adopted by the municipal legislative body.

18 The bill clarifies that the centralized listing of municipal ordinances maintained by the
19 bureau specifically applies to ordinances that apply to timber harvesting activities.